# UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

COUNTRYWIDE FINANCIAL CORPORATION, COUNTRYWIDE HOME LOANS, INC., AND BANK OF AMERICA CORPORATION

and

Case 31-CA-072916

JOSHUA D. BUCK and MARK THIERMAN, THIERMAN LAW FIRM

and

Case 31-CA-072918

PAUL CULLEN, THE CULLEN LAW FIRM

# GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Pursuant to § 102.24 of the Rules and Regulations of the National Labor Relations Board, as amended, Counsel for the Acting General Counsel hereby opposes the Respondent's Motion for Summary Judgment (Motion) dated November 12, 2012. Respondent claims that the charges in Cases 31-CA-072916 and 31-CA-072918 in the Consolidated Complaint and Notice of Hearing that issued on October 23, 2012 involve matters where there are no genuine issues of material fact. Respondent claims this despite its Answer to the Consolidated Complaint, filed November 5, 2012, which denies the very facts alleged that make up the basis for those charges.

The Board should deny Respondent's Motion because there exist issues of material fact which are most appropriately resolved in an administrative hearing before an Administrative Law Judge.

## I. BACKGROUND

Respondent Countrywide Financial Corporation and Countrywide Home Loans, Inc., are wholly-owned subsidiaries of Bank of America Corporation ("BOAC"). At all material times, BOAC has been a corporation with an office and place of business in Lancaster, California, and has been engaged in the operation of a financial institution providing financial services. Joshua D. Buck and Mark Thierman, Thierman Law Firm and Paul Cullen, The Cullen Law Firm, filed the charges in Case Nos. 31-CA-072916 and 31-CA-072918, respectively, alleging that Respondent maintained and enforced arbitration agreements in violation of Section 8(a)(1) of the Act. The Consolidated Complaint and Notice of Hearing (Complaint) in these cases issued on October 23, 2012, setting the hearing for December 10, 2012. Respondent seeks to have this matter resolved by summary judgment.

## II. ISSUES OF MATERIAL FACT REMAIN

Summary judgment may be rendered if the pleadings and supporting materials establish that there is no genuine issue requiring a hearing and, that the moving party is entitled to judgment as a matter of law. *Lakeview Convalescent Center*, 307 NLRB 563, 564

(1992). In a summary judgment proceeding, the pleadings and evidence are viewed in the light most favorable to the nonmoving party. *Eldeco, Inc.*, 336 NLRB 899, 900 (2001) (pleadings must be read in the light most favorable to the nonmoving party); *PetrochemInsulation, Inc.*, 330 NLRB 47, 52 n. 20 (1999) (evidence evaluated in the light most favorable to the nonmoving party). It is well settled that, in order for a matter to be appropriate for summary judgment it must affirmatively appear in the record (1) that there is no genuine issue as to any material fact and (2) that the moving party is entitled to a judgment as a matter of law. *Stephens College*, 260 NLRB 1049 (1982). In addition, the Board has held that "a simple denial of unlawful conduct is sufficient to raise a material question, without requiring [General Counsel] to come forward with affidavits or other evidence." *Lake Charles Memorial Hospital*, 240 NLRB 1330, 1331 n. 4 (1979) (citing *Florida Steel Corporation*, 222 NLRB 586 (1976)).

Respondent claims that there are no issues of material fact regarding allegations in the Complaint. Respondent's claim is disingenuous, given that it filed an Answer wherein it denies virtually every complaint allegation. Without clear admissions to the complaint allegations, Respondent cannot argue that there is no material issue with regard to the facts. The issues of material fact that exist include, but are not limited to, the service and filing of charges, commerce, jurisdiction, whether Respondent required employees Dominque Whitaker and John White to sign arbitration agreements, and whether Respondent filed a motion with the district court to compel individual

arbitration on August 22, 2011. In sum, significant and genuine issues of material fact remain and preclude summary judgment.

#### III. CONCLUSION

Based on the foregoing, it is respectfully requested that the Board deny Respondent's Motion, as shown above, its motion raises significant issues of fact. As to many of Respondent's factual assertions, Counsel for the Acting General Counsel intends to introduce contravening evidence at the hearing. It is respectfully submitted that Respondent's Motion should be denied expeditiously to avoid any delay of the litigation of this matter which is scheduled to commence on December 10, 2012. Should the Board issue a Notice to Show Cause, the General Counsel reserves its right to supplement this Opposition to the Respondent's Motion.

Dated at Los Angeles, California, this 16th day of November, 2012.

Katherine Mankin, Esq.

Counsel for the Acting General Counsel

National Labor Relations Board

Region 31

11150 West Olympic Blvd., Suite 700

Los Angeles, CA 90064

Re: COUNTRYWIDE FINANCIAL CORPORATION,

COUNTRYWIDE HOME LOANS, INC., AND BANK OF AMERICA CORPORATION Cases: 31-CA-072916 and 31-CA-072918

## **CERTIFICATE OF SERVICE**

I hereby certify that I served the attached **GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT** on the parties listed below on the 16<sup>th</sup> day of November, 2012:

# **SERVED VIA E-FILING**

Lester A. Heltzer, Executive Secretary Office of the Executive Secretary National Labor Relations Board www.nlrb.gov

## **SERVED VIA E-MAIL:**

Gregg A. Fisch, Esq.
Sheppard Mullin Richter & Hampton LLP <a href="mailto:gfisch@sheppardmullin.com">gfisch@sheppardmullin.com</a>

Joshua D. Buck, Esq. Thierman Law Firm, P.C. josh@thiermanlaw.com

Paul Cullen, Esq.
The Cullen Law Firm
paul@cullenlegal.com

Aide Carretero

Secretary to the Deputy Regional Attorney National Labor Relations Board

Ride Canota

Region 31

11150 West Olympic Blvd., Suite 700 Los Angeles, CA 90064-1825